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TRANSMITTAL FORM

Application Number	Unassigned 10 036974
Filing Date	December 28, 2001
First Named Inventor	Etiore DeLena
Group Art Unit	Unassigned
Examiner Name	Unassigned
Attorney Docket Number	42922.00048

Total Number of Pages in This Submission 6

ENCLOSURES (check all that apply)

<input type="checkbox"/> Fee Transmittal Form <input type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Response <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/ Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input checked="" type="checkbox"/> Other Enclosure(s) (please identify below): - Petition to Accord A Filing Date - Affidavit in Support of Petition to Accord a Filing Date - Return Postcard
Remarks		

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	Daryl C. Josephson Squire, Sanders & Dempsey LLP 60 Hansen Way Palo Alto, California 94304
Signature	
Date	February 4, 2002

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Assistant Commissioner for Patents, Washington, D.C. 20231 on this date: February 4, 2002

Typed or printed name	Daryl C. Josephson		
Signature		Date	February 4, 2002

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Date: February 4, 2002

By

Daryl C. Josephson
Daryl C. Josephson

COPY OF PAPER
ORIGINALLY FILED

In Re Application Of: Ettore DiLena et al. Serial No: Unknown <u>10 036 974</u> Filed: December 28, 2001 For: CONFIGURATION SYSTEM AND METHODS	Examiner: Unknown Art Unit: Unknown
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Commissioner for Patents
Washington, D.C. 20231

**PETITION TO ACCORD A FILING DATE AS OF THE DATE DEPOSITED
WITH THE USPS UNDER 37 CFR § 1.10**

Sir:

Applicants respectfully petition the Commissioner to accord to the above patent application the filing date of December 28, 2001, on which date the Patent Application, Filing Documents, postcard and correctly labeled envelope were deposited with the USPS. In support thereof, the undersigned submits the enclosed Affidavit, Filing Documents, Postcard and Express Mailing label.

Facts as Proffered by the Attached Affidavit:

On December 28, 2001, the undersigned Registered Patent Attorney attempted in good faith to deposit the above-identified patent application directly with an employee of the United States Post Office at the San Francisco Airport ("SFO-PO") during normal business hours as are posted at the SFO-PO and on the official USPS web site. No special schedule was posted or applicable on December 28, 2001. The undersigned was present and prepared to deposit the application in full compliance with 37 CFR § 1.10.

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However, the USPS, without prior notice or stated reason, "closed" early and refused such deposit.

The undersigned arrived at the SFO-PO, December 28, 2001, at 11:50pm. The undersigned confirmed the arrival time by the SFO-PO clock, office clock, watch, car clock and radio news broadcast. The undersigned confirmed the posted closing time of 11:59pm via the posted schedule at the SFO-PO and the official USPS web site. In fact, upon the undersigned's arrival, the inner door to the SFO-PO service counter was unlocked and USPS agents were accepting deposits from other customers.

Despite the current time being coordinate with normal hours of operation and sufficient time to accept deposit from the undersigned, USPS agents denied the undersigned entrance to deposit the Express Mail envelope directly, and denied deposit by the undersigned via other patrons to whom a postmark of December 28, 2001 was still being provided. The USPS employees rendered such denial despite the undersigned's indication of the current time, posted USPS schedule, and the importance of the document and its proper deposit with the USPS.

Without option and at the direction of USPS agents, the undersigned purchased and affixed stamps to the sealed Express Mail envelope already having deposit account payment thereon, and deposited the Express Mail envelope into an appropriate receptacle prior to midnight.

Arguments in Support of this Petition

The Commissioner is respectfully requested to grant this petition for the following reasons:

1. An injustice in contradiction to the intent of 37 CFR § 1.10 would result if Applicants were improperly denied proper deposit of the above patent application due to (a) a failure of the USPS to enter a correct date on the Express Mail receipt; (b) a failure of the USPS to collect the Express Mail envelope during a normal pickup from an appropriate drop box; (c) a denial of the undersigned's deposit by a USPS clerk based on prejudice; or (d) other improper reasons in contradiction of USPS operating procedures upon which the requirements of 37 CFR § 1.10 are founded. Therefore, a filing date of December 28, 2001 should properly be granted in this case to avoid a gross injustice in contradiction of 37 CFR § 1.10.

2. The undersigned attempted in good faith to deposit the above patent application with the appropriate USPS agents on December 28, 2001 and was improperly denied such deposit in a manner to which correction by the Commissioner under 37 CFR § 1.10 is particularly appropriate. Therefore, a filing date of December 28, 2001 should properly be granted in this case.

3. The undersigned was prepared to render the requisite deposit and did in fact deposit the patent application in substantial compliance and to the best of his ability on December 28, 2001. Therefore, a filing date of December 28, 2001 should properly be granted in this case to avoid a gross injustice in contradiction of 37 CFR § 1.10.

4. Unlike the USPS agents who improperly prevented proper deposit, perhaps merely to start the holiday weekend early, the undersigned is charged by his license and registration with a duty to his client, to the USPTO, and to the State of Pennsylvania. In accordance with such duties, the undersigned attempted to comply fully with deposit requirements, did substantially comply, and now seeks by this petition to avoid a miscarriage of justice on behalf of his clients, the USPTO, and the State of Pennsylvania. Therefore, a filing date of December 28, 2001 should properly be granted in this case.

5. A gross injustice would result in contradiction to the intent of 35 U.S.C. § 111(a), 35 U.S.C. § 371 and 37 CFR § 1.211 if, due to the improper actions of the USPS and despite the undersigned's good faith efforts, patent publication did not occur with a filing date of December 28, 2001. Therefore, a filing date of December 28, 2001 should properly be granted in this case.


6. A gross injustice would result in contradiction of the intent of 35 U.S.C. 101 and CFR § 1.10 if, due to the improper actions of the USPS clerks, the Applicants were denied the correct FILING DATE, their CLAIM OF PRIORITY to the provisional patent application filed on December 28, 2000, and their earliest assertable DATE OF INVENTION. Therefore, a filing date of December 28, 2001 should properly be granted in this case.

THEREFORE, for each of the above reasons, both individually and in combination, Applicants and their undersigned Attorney respectfully request the Commissioner to grant this petition by according to the above-identified patent application and attached correspondence a filing date, coordinate with the date of deposit with the USPS, of December 28, 2001.

The undersigned further authorizes any additional fees which may be required, or credit any overpayment to Deposit Account No. 05-0150.

Respectfully submitted,

Date: February 4, 2002
SQUIRE, SANDERS & DEMPSEY L.L.P.
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Telephone (650) 856-6500
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Daryl C. Josephson
Attorney for Applicants
Reg. No. 37,365

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Atty. Docket No. 42922.00048



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CERTIFICATE OF MAILING

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COPY OF PAPER
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Date: February 4, 2002

By

Daryl C. Josephson
Daryl C. Josephson

In Re Application Of:	Examiner: Unknown
Ettore DiLena et al.	Art Unit: Unknown
Serial No: Unknown <u>10 036 974</u>	
Filed: December 28, 2001	
For: CONFIGURATION SYSTEM AND METHODS	

Commissioner for Patents
Washington, D.C. 20231

**AFFIDAVIT IN SUPPORT OF
PETITION TO ACCORD A FILING DATE AS OF THE DATE DEPOSITED
WITH THE USPS UNDER 37 CFR § 1.10**

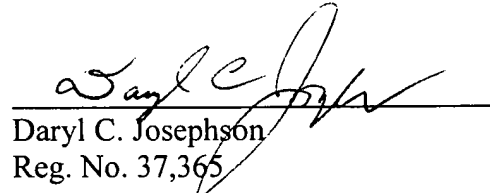
I, Daryl Craig Josephson, do hereby swear under penalty of perjury that the following is true and correct to the best of my knowledge:

1. On December 28, 2001, I attempted in good faith to deposit the above-identified patent application directly with an employee of the United States Post Office at the San Francisco Airport ("SFO-PO") during normal business hours of the SFO-PO.
2. Normal business hours for the SFO-PO for a Friday include a closing time of 11:59pm according to the Official USPS web site, and no special schedule was visibly posted at the SFO-PO on December 28, 2001 for that date.
3. My time references for December 28, 2001 include the following: my office clock prior to leaving for the SFO-PO, my car clock, my watch and a radio broadcast while in my car traveling to the SFO-PO, and the SFO-PO clock after arriving at the SFO-PO.
4. I arrived at the SFO-PO, December 28, 2001, at 11:49pm, entered the SFO-PO lobby, and attempted to enter the counter or "service" area of the SFO-PO carrying two packages, one including the above patent application, and filing papers, a self addressed, stamped postcard and a properly addressed mailing label for the patent application.

5. When I attempted to enter the service area of the SFO-PO, the door to the service area was unlocked and USPS agents behind the service area counter were accepting deposits from a small group of customers. No special closing time was visibly posted for December 28, 2001.
6. When I attempted to enter the service area of the SFO-PO, a USPS agent stopped me at the door, told me that the SFO-PO was closed and refused my entry.
7. I alerted the USPS agent that the time was not yet 11:59pm, that the package I carried was a legal document and patent application for which a postmark of December 28 was urgent and that my entry must be permitted in order to file and preserve my client's rights. The USPS agent did not contest any part of my statement, but refused my entry telling me merely that the agents behind the counter did not want to serve me.
8. I further requested the USPS agent at the door to hand my package to a USPS agent behind the counter or another customer for deposit, noting that the label included my firm's charge account and completed addressing information. The USPS agents refused.
9. At that point, the USPS agent at the counter and then the USPS agent at the door instructed me to purchase stamps from a vending machine, affix the stamps and drop the stamped package in a drop box. Having no better option, I complied and deposited the stamped Express Mail envelope in the appropriate drop box for Express Mail before midnight.
10. After leaving the SFO-PO and upon arriving home, I further checked the official USPS web site, which posted a closing time for the SFO-PO as 11:59pm. I could not locate a special SFO-PO closing time for December 28, 2001 on the web site.
11. Having waited for and received the mailing receipt from the USPS (in accordance with 37 CFR § 1.10), I prepared this Affidavit and the accompanying PETITION TO ACCORD A FILING DATE AS OF THE DATE DEPOSITED WITH THE USPS UNDER 37 CFR § 1.10 for filing with the USPTO.

Respectfully submitted,

Date: February 4, 2002
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